# DIGEST OF BUSINESS REVIEWS

## 1996

96-1 Oklahoma Physicians Network-IPA, Inc./PROklahoma Care, Inc. 1/17/96

Health Care Joint Venture
Medical Services Physician Network Joint Venture

Facts: Oklahoma physicians proposed to establish a statewide, non-exclusive physician network and an HMO to provide primary care and specialist services in Oklahoma. The physician network would negotiate contracts with the HMO and other third-party payers, either on a capitated basis or under a fee-for-service schedule utilizing a “risk pool” withhold of 20 percent of the fees due each physician.

Response: The proposal appears to be a bona fide joint venture whose members will share substantial risk with an incentive to achieve cost containment and utilization goals. Participating primary physicians generally comprise no more than 30 percent of the primary physicians in putative local markets in both urban and rural parts of the state. The network has fewer than 30 percent of the specialist physicians in most specialties in urban parts of the state, but does have more than 30 percent of specialists in some putative local markets in rural parts of the state. However, the network will retain an incentive to ensure that its physician services are priced competitively because roughly 90 percent of the physician-members are in specialties in local market in which the network does not have a substantial percentage of the physicians. The Department has no present intention to challenge the proposal.

96-2 Automated Interchange Matching System, Inc. 2/22/96

Electrical Power Information Exchange

Facts: AIMS is a corporation formed by 26 electric power utilities and marketers for the purpose of establishing a computerized system for trading one-hour blocks of electrical energy. Currently, potential transaction partners contact each other by phone in order to reach bilateral agreements. AMIS proposes to create a computer system that would enable its members to electronically post buy and sell orders for next-hour energy. The buy and sell bids would then be matched, and the matched parties would carry out the transactions (if they chose to) pursuant to existing bilateral contracts.

Response: The exchange of bids and quotes for next-hour electrical energy as proposed by AMIS would not appear to raise any danger of price collusion or otherwise impede competition. To the extent that such trading allows more efficient producers to sell more of their output to willing buyers, pricing rivalry based on efficiency would be heightened, to the benefit of consumers. The Department has no present intention to challenge the proposal.

96-3 Southwest Power Pool, Inc. 2/22/96

Electrical Power Information Exchange

Facts: SPP is one of the nine Regional Reliability Councils within the U.S. dedicated to facilitating coordination among electrical power firms as a means of promoting the efficiency and reliability of electric service. Its membership includes investor-owned utilities, cooperatives, municipalities, wholesale generators, and marketers. SPP proposes to establish a computerized trading system that would enable its members to buy and sell next-hour electrical power to and from each other on a real-time basis. Sellers of energy would post the quantity that they are willing to offer at a specified price; sellers of transmission services would post their interface capabilities and price. As a result, potential purchasers of next-hour energy would be able to compute the delivered cost to them of specific quantities, while quotes posted by potential purchasers would enable potential sellers of next-hour energy to locate selling opportunities.

Response: Making real-time quotes available to those in a position to buy or sell the posted next-hour energy under the conditions described by SPP would not be likely to foster price collusion or otherwise impede competition. To the extent that such trading allows more efficient producers to sell more of their output to willing buyers, pricing rivalry based on efficiency would be heightened, to the benefit of consumers. The Department has no present intention to challenge the proposal.

96-4 Intermodal Committee on Efficiency 2/23/96

Transportation Services Information Exchange

Facts: ICE will consist of four members, each of which is a firm engaged in arranging for the transportation of intermodal freight shipments. To foster greater intermodal cooperation and efficiency, the four members of ICE propose to discuss amongst themselves common problems facing their segment of the intermodal industry and would thereafter present their consensus views on such issues to railroads and truckers, who would be free to accept or reject the ICE proposals.

Response: ICE’s proposal would not appear to facilitate price collusion or any concerted refusals to deal with rail or truck carriers. ICE’s members will continue to act unilaterally with respect to price and output and the parties with whom they deal will remain free to accept or reject ICE’s non-price recommendations with respect to better equipment utilization or other aspects of intermodal transport. Under these circumstances, the proposal should not have an anticompetitive effect. To the extent that it promotes a more efficient utilization of intermodal equipment or facilities, or lowers costs in some other manner, the proposed activities could advance consumer interests. The Department has no present intention to challenge the proposal.

96-5 Children's Healthcare, P.A. 3/1/96

Health Care | Joint Venture
Medical Services | Physician Network Joint Venture

Facts: Sixty-five to 70 pediatricians practicing in seven counties in southern New Jersey proposed to form Children's Healthcare, P.A. (CHPA), a provider network to contract with managed care plans for the provision of basic health care to children of plan enrollees. The group proposed to share risk either through capitation or via an unspecified percentage fee withhold subject to its meeting certain cost containment goals. CHPA would have a right of first refusal to negotiate with any payer seeking to initiate or renew a contract with an individual member of the group, after which members would be free to contract individually or join other similar networks. CHPA alleged a service market reaching to any other primary care or specialty physicians who treat children, and a geographic market encompassing the greater Delaware Valley, consisting of southern New Jersey, southeastern Pennsylvania and northern Delaware, and asserted that within those parameters it would possess no market power and thus pose no competitive threat.

Response: Rule of reason analysis led the Department to conclude that CHPA, if implemented as proposed, would likely violate the antitrust laws. In the area to be serviced by CHPA, family practitioners are not acceptable substitutes for pediatricians in the development of managed care physician networks, and markets for basic pediatric services are significantly more localized than CHPA asserted. As a result, in several south New Jersey communities, CHPA would achieve high levels of concentration (50 percent - 77 percent) in the relevant service market and would be able to exercise market power to the detriment of consumers. Further, information developed in our investigation suggested a significant danger that CHPA might operate in a de facto exclusive manner, thus depriving plans of competitive alternatives in an area where there are, according to plan managers, significant barriers to new entry. On balance, the projected efficiencies claimed by CHPA, such as risk-sharing, development of practice procedures, sharing of administrative expenses, and joint purchasing, do not outweigh the significant threat of anticompetitive effects posed by the venture. The Department intends to challenge implementation of CHPA's proposed physician network joint venture unless it is modified in a manner that sufficiently addresses the Department's concerns.

96-6 Southern Health Corporation 3/5/96

Health Care | Joint Venture
Medical Services | Multiprovider Network
Hospital Services | Messenger Model

Facts: Southern Health Corporation (SHC) proposed to form a physician hospital organization (PHO) among its owned and/or operated hospitals and nursing homes in northern Georgia and those facilities' affiliated physicians, to be called the Southeastern Healthcare Alliance, Inc. While the PHO would include high percentages of the primary care doctors in this rural area, joint price setting among horizontal competitors would be avoided by use of a messenger model to establish contracts with managed care plans and other payers. An agent of the PHO would receive contract offers from payers and convey these individually to members of the PHO. At the specific written request of payers, the agent would discuss and transmit information regarding potentially competitively significant terms or conditions (e.g., utilization review or credentialing) and would negotiate for the group regarding administrative issues such as billing practices and contract interpretation. The PHO would be non-exclusive, allowing doctors and/or hospitals to join other networks or to contract individually with payers.

Response: By avoiding any horizontal fee-setting or joint agreement on other competitively significant contract terms among competing doctors, the PHO is not likely to cause harm to existing competition in the market for physician services. The market for hospital services will not be affected since the four SHC hospitals are already under common ownership and control. Because providers are free to join other networks or contract individually with plans, the PHO would not impede the development of competing networks as managed care develops in the area. The Department has no present intention to challenge the proposal.

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| 96-7 | Orange Los Angeles Medical Group, Inc. | 3/8/96 |
| | Health Care<br>Medical Services | Joint Venture<br>Physician Network Joint Venture |

Facts: Five large, financially integrated anesthesia medical groups that currently serve as the exclusive or principal anesthesia suppliers for six major Orange County hospitals proposed to form Orange Los Angeles Medical Group, Inc. (ORLA), a contracting organization that would negotiate with the hospitals, managed care health plans and primary provider organizations (such as IPAs and large medical groups) they serve. The proposed joint venture would be exclusive -- its member-groups, and their member-anesthesiologists, would not be free to contract directly with managed care customers in competition with ORLA.

Response: Each of the hospitals served by the five ORLA groups would consider, as a viable competitive alternative to its existing group, only a similarly large, financially integrated anesthesia group with comparable hospital anesthesia management experience. Further, each hospital would substitute a lower-priced alternative group only if the alternative group's anesthesiologists lived and worked in close proximity to that hospital. For each hospital served by one of the five ORLA groups, there currently are at most six such competitive alternatives (i.e., the five groups that propose to form ORLA, and the one comparable Orange County group that is not participating in ORLA); if ORLA is implemented as proposed, it would reduce the number of competitive alternatives to no more than one. (For some of those hospitals, ORLA may eliminate all existing competitive alternatives.) Under current market conditions, entry by credible competitive alternatives is unlikely to occur in the near future on a sufficient scale to offset ORLA's substantial reduction in competition. Thus, hospitals, primary provider groups, and managed care health plans believed that the joint venture would enable ORLA to exercise market power. Finally, any efficiencies ORLA may achieve could otherwise be achieved in ways that would not reduce competition. The Department cannot state a present enforcement intention not to challenge ORLA if its proposed operations are implemented.

96-8 Allergy & Asthma Consultants, Inc. 3/19/96

Health Care — Joint Venture
Medical Services — Physician Network Joint Venture

Facts: A group of allergists serving Massachusetts and six neighboring states proposed to form a non-exclusive physician network joint venture to negotiate and contract with health benefit plans. The group, to be called Allergy and Asthma Consultants, Inc. ("AAC"), would provide services either under a capitated payment plan or using a discounted fee-for-service schedule with a "risk pool" withhold of at least 20 percent of the fees due each physician.

Response: The proposed activities fall within the "safety zone" of Statement Eight of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust issued by the Department of Justice and Federal Trade Commission on September 27, 1994. AAC would represent approximately 10 percent of the practicing allergists in Massachusetts. The network will achieve significant integration through risk sharing, and provide utilization review and quality assurance monitoring. Since AAC physician providers will participate on a non-exclusive basis, competing networks will not be adversely affected. The proposal also involves additional competitive safeguards, including provisions relevant to a previously entered consent decree between the United States and one of the initial participants in AAC. The Department has no present intention to challenge the proposal.

96-9 Itasca Clinic/
Grand Rapids Medical Associates 3/19/96

Health Care — Acquisition/Merger
Medical Services

Facts: Two small physician clinics (one with 13, one with 8 physicians) in rural northern Minnesota proposed to merge for the stated purpose of enhancing their ability to provide quality care in a cost-effective manner and to facilitate the recruitment of specialist physicians into the merged group in order to increase the range of health care services available locally.

Response: Relying substantially on the clinics' presentation of the pertinent market facts, the Department evaluated the proposed merger for its likely competitive effects in two relevant product markets: (1) primary care services provided by primary practice doctors and internists, and (2) general surgical services. In those markets the merged clinic would employ about 40 percent of the primary care doctors and about 32 percent of the general surgeons. Given the lack of any competitive concerns among payers and some payers' belief that the merger would increase access to medical care, the merger did not appear likely to substantially lessen competition. The Department has no present intention to challenge the proposal.

96-10 Pentagon Federal Credit Union 4/16/96

Credit Unions Credit Practice

Facts: Twenty Washington, D.C.-area credit unions proposed to promote a tent sale for new cars in which their members would have the opportunity to compare various brands of automobiles at a single site and to purchase a new car at a price no higher than that which a credit union representative negotiated with each new car dealer. Purchasers would be free to finance their purchases through a credit union, other financial institution, or a manufacturer/dealer financing organization (or to pay cash), but sponsoring credit unions would require participating auto dealers to enter into a contractual commitment not to discuss financing terms with a potential purchaser until the purchaser had applied for credit union financing or notified the credit union that he or she had reviewed the credit union financing options and decided to go elsewhere.

Response: Inasmuch as the credit union negotiator would deal with each car dealer on an individual, one-on-one basis and would not communicate any information to a dealer relating to what prices had been agreed to by other dealers, it is not likely that the credit union proposal would promote or involve its negotiator in any per se unlawful price-fixing agreement among auto dealers. It is also unlikely that the temporary delay that would be imposed on the initiation of auto dealer financing discussions with credit union members would have any anticompetitive effect in any car financing market. The Department has no present intention to challenge the proposal.

96-11 Hospice Network of New Jersey, Inc. 4/24/96

Health Care Joint Venture
Hospice Services

Facts: A group of institutions that coordinate delivery of care to terminally ill patients proposed to form a joint venture to negotiate and contract with health benefit plans to provide enrollees with hospice services. Each of the seven initial members operates in a different New Jersey county.

Response: Hospice services are provided in local markets. The seven initial members of the venture are in distinct geographic areas and thus not direct competitors. Therefore, joint marketing and other cooperative arrangements among the members are unlikely to have an anticompetitive effect in any local market. However, if future members are direct competitors with other members, the group must either avoid joint pricing and agreements on other significant terms of competition, or they must ensure that such joint decisions are necessarily related to significant economic integration among them. The Department has no present intention to challenge the proposal.

96-12 Baker Hughes Inteq/ Dresser Industries, Inc./ M-1 Drilling Fluids — 5/13/96

Well Drilling — Joint Venture Group Purchasing

Facts: Three Texas oil well-drilling suppliers propose to form a joint venture to purchase barite from China. Barite is an inert material used as a weighing agent in oil well-drilling fluids. The joint venture corporation would purchase barite from Chinese suppliers on behalf of the three firms, provide for quality testing before shipment, try to improve the quality control methods of Chinese barite suppliers, and arrange for shipment from China to the facilities of the three firms. The three firms would be required to purchase Chinese barite exclusively through their joint venture purchasing agent, but they would be free to continue independently to purchase non-Chinese barite. Negotiations on behalf of the joint venture would be conducted by that venture's employees or an independent party hired by the venture rather than by employees of the owner firms. Communications between the venture's negotiators and an owner firm would not be shared with other owner firms.

Response: The joint venture would not possess market power as a purchaser of shipping space in the China-U.S. trade since its anticipated shipments would constitute far less than the 35 percent market share the Department uses as a safe-harbor criterion for determining the legality of shipper's associations. The joint venture would not increase the three firms' common costs to the point that they could more successfully coordinate the prices of their finished products since barite accounts for less than 20 percent of the selling price of the drilling fluids into which it is incorporated and Chinese barite accounts for only about 42 percent of barite used by U.S. drilling-fluid producers, which would result in common costs that are below the 20 percent of the price of the sold finished product that the Department uses as a safe harbor in determining whether joint purchasing may raise a significant risk of collusion. The procedures proposed to limit communication of information among the three firms further reduce the risk that the joint purchasing agent would have any anticompetitive effect in the sale of drilling fluid or oil-drilling services. To the extent that the joint purchasing venture reduces costs or better enables the three firms to overcome their quality and reliability concerns with Chinese barite, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

96-13 Transportation Claims and Prevention Council, Inc. — 6/14/96

Transportation Services — Standards Program

Facts: TCPC is composed of over 500 companies who ship goods via motor carrier. Motor carriers currently utilize a Uniform Bill of Lading that incorporates, by reference, certain rates, classifications, and rules. A shipper's lack of actual knowledge of such terms can lead to contract disputes with motor carriers. TCPC proposed to develop an alternative Shippers' Bill and Common Carrier Rate Agreement that would include all of the governing rates and terms within the document itself. The proposed Shippers' Bill would not establish rates or prices, and its use would be completely voluntary by both shippers and motor carriers.

Response: The voluntary nature of the proposed standardized business forms and the fact that they do not involve any agreement among rivals as to price or price-related terms or conditions makes it unlikely that TCPC's proposed activities would be anticompetitive. If the utilization of a form of contract that relies more on actual knowledge than constructive knowledge reduces the cost of contract disputes, the result could be procompetitive. The Department has no present intention to challenge the proposal.

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| 96-14 | Independent Automotive Damage Appraisers Association | 6/27/96 |
| | Appraisal Services | Joint Marketing |

Facts: IADAA is a national trade association composed of approximately 92 independent automotive damage appraisers who sell their services to local insurance companies, oil leasing companies, banks, and fleet service companies. In order to compete for customers who prefer to purchase appraisal services on a national or multi-regional basis, IADAA proposed to use an independent third-party agent to market its members' services to such customers. IADAA's "messenger" agent would meet with national account representatives, obtain from them the various proposals that those firms utilize in hiring independent appraisers, and report the results of any meeting to the entire IADAA membership. In those instances where a national account is willing to refer matters to IADAA members, the members will be so informed and a copy of the national account's proposal will be given to each IADAA member. Individual members will write back to the agent, advising the agent whether the member is willing to perform appraisals under the terms and conditions offered by the national account. The agent will forward the responses to the national account, which will unilaterally decide whether to participate in the IADAA marketing program and with which IADAA members it will do business. IADAA members will not exchange information among themselves regarding their business dealings with any national account and remain free to negotiate for business with any national account on any terms outside of the IADAA marketing program.

Response: In light of the fact that IADAA members constitute only a very small percentage of the total number of damage appraisers, that members will not discuss price with each other, and that each individual IADAA member will make its own independent decision about whether and on what terms it will deal with a national account, the proposed arrangement should not pose any significant competitive issues. To the extent that the proposed marketing plan increases the number of automotive damage appraisers available to national purchasers of such services, it could have a procompetitive effect. The Department has no present intention to challenge the proposal.

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| 96-15 | Plastic Surgery Associates of Connecticut, LLC | 6/28/96 |
| | Health Care<br>Medical Services | Joint Venture<br>Physician Network Joint Venture |

Facts: Eight plastic surgeons practicing in southwest Connecticut proposed to form a nonexclusive network joint venture to contract with HMOs, employers, primary care IPAs, PHOs, and other payers to provide a variety of plastic and reconstructive surgical services. Members would contribute capital to the corporation and would share risk through either fee withholds or capitated rates.

Response: PSAC appears to be a bona fide joint venture whose members will share substantial financial risk and will not possess anticompetitive levels of market power in any reasonable geographic market. There are adequate reasonable substitutes for the services provided by PSAC's members, and PSAC's formation appears to fall well within the 30 percent safety zone for non-exclusive physician networks. In addition, it appears that PSAC will likely provide efficiency-based benefits, including lower prices for plastic surgery services, to health care payers and consumers and is likely to foster increased competition. The Department has no present intention to challenge the proposal.

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| 96-16 | Allied Colon and Rectal Specialists | 7/1/96 |
| | Health Care<br>Medical Services | Joint Venture<br>Physician Network Joint Venture |

Facts: Seven of the nine dedicated colon and rectal specialists in the Phoenix metropolitan area (and seven of 10 statewide) proposed to form a non-exclusive independent practice association ("IPA") in Maricopa County, Arizona. Members would assume significant financial risk by participating in either capitated contracts or in a fee withhold arrangement.

Response: Although this network is the only one in Arizona specializing in colon and rectal surgical services and includes seven of nine specialists in the county and seven of 10 in the state, payers confirmed that colon and rectal surgical services are readily available from general surgeons and other types of surgeons. When these substitutes for ACRS surgeons are included in the service market, a reasonable approximation of ACRS's combined market share is 15 percent in Maricopa County and 9 percent statewide. The ready availability of substitute providers makes it unlikely that ACRS could successfully act anticompetitively. The network also may have procompetitive effects. The Department has no present intention to challenge the proposal.

96-17 Primary and Specialist Medical Center, L.L.C. — 7/2/96

Health Care — Joint Venture
Medical Services — Physician Network Joint Venture

Facts: Forty-eight physicians in eight medical specialties proposed to form a network that will provide medical services in a six-city area including New Haven, Connecticut, and will represent its members on an exclusive basis in negotiations with managed care payers. The group will offer both capitated and discounted fee-for-service contracts, with a 20 percent withhold at risk. The area in which PSMC will operate can be traversed by automobile within approximately 20 minutes, a travel time payers view as generally acceptable for patient convenience.

Response: PSMC's members will account for less than 20 percent of the physicians in each medical specialty in the six-city area in which PSMC will operate and will share substantial financial risk. Thus, PSMC's proposal meets the 20 percent safety zone for exclusive physician networks. It is unlikely that PSMC would create market power that would lead to competitive harm. The Department has no present intention to challenge the proposal.

96-18 Utilities Service Alliance — 7/3/96

Nuclear Power — Joint Venture
Group Purchasing

Facts: Eight electrical utilities that operate nuclear power plants proposed forming USA, a joint venture that would allow its members to share existing resources, jointly procure goods and services, and consolidate selected internal functions and activities. Membership in USA would be open and could grow up to the point when member nuclear power utilities operated 35 percent of the nuclear power reactors in the U.S., at which point membership would be closed. Members would be free to purchase goods and services jointly through USA or to pursue any or all of their purchasing independently. USA's Code of Conduct would prohibit its members from exchanging or discussing any information about electric power pricing, the prices they would pay for goods and services outside their joint purchasing activities, or their marketing or output plans.

Response: USA is not likely to be able to exercise monopsony power in the joint purchase of goods or services utilized in nuclear power production. Membership will not be allowed to result in a greater than 35 percent market share, the safe harbor that the Division has employed in reviewing joint-purchasing ventures. Moreover, even if one assumed that the members would do all of their procurement jointly through USA, the common costs would constitute only 3 percent of the finished product revenues, well below the 20 percent safe harbor employed by the Division in determining when joint purchasing is likely to reduce competition among joint purchasers in their sales markets. The Department has no present intention to challenge the proposal.

96-19 El Paso Surgical Group 7/24/96

Health Care
Medical Services

Joint Venture
Physician Network Joint Venture

Facts: Eight general surgeons in El Paso proposed to form a non-exclusive network to provide general surgical services in the El Paso area at reduced costs to managed care plans and other third party payers. EPSG would be non-exclusive and would share risk either through capitation or by withholding at least 20 percent of fees due as a risk pool. EPSG may expand to include no more than four additional general surgeons and it may also add other types of doctors.

Response: As proposed, EPSG constitutes approximately 23 percent of the general surgeons in the area; if four more are added, it will comprise 34 percent. Based on payer interviews, it is not likely that the network would result in market power or cause anticompetitive effects. If EPSG adds other types of physicians but includes no more than 30 percent of the physicians in any specialty in the area, the network would fit within the safety zone for non-exclusive physician networks. Higher percentages would be judged under the rule of reason. The Department has no present intention to challenge the proposal.

96-20 Sierra CommCare, Inc. 8/15/96

Health Care
Medical Services

Joint Venture
Messenger Model

Facts: An 80-bed community hospital and 23 physicians engaged in group or solo practice proposed to form a non-exclusive network to provide primary care and specialist physician services in the Ridge Crest, California area. Sierra will retain the services of an independent third party to administer the operations of the venture and act as a "messenger" between payers and individual members. The messenger will convey contract offers between payers and individual members without expressing his or her views or otherwise attempting to influence contract decisions, and each member will independently accept or reject such offers. Sierra will also establish policies and procedures to restrict the flow of competitively sensitive information among network members and from the venture to the members. Members may compete with Sierra and will not be discouraged from joining other networks or contracting directly with health plans.

Response: Sierra appears to have properly structured its messenger model arrangements to avoid agreements on prices and other competitively sensitive matters. If the arrangements are carefully implemented, the network’s operations should not result in price collusion or cause anticompetitive harm, even though Sierra’s network will include virtually all of the physicians in its service area and the markets for physician services there are highly concentrated. The Department has no present intention to challenge the proposal.

96-21 Cincinnati Regional Orthopaedic and Sports Medicine Associates, Inc. 10/4/96

Health Care | Joint Venture
Medical Services | Physician Network Joint Venture

Facts: Fifty-six of the approximately 158 board-eligible or board-certified orthopaedic surgeons practicing in the greater Cincinnati metropolitan area proposed to form an independent practice association ("IPA") to offer prepaid medical and surgical services on a capitated basis to third-party payers and self-insured employers. Currently in 10 separate practice groups, the 56-orthopaedist group will be non-exclusive in nature and will contract with third party payers either on a capitated basis or possibly using a discounted fee-for-service schedule with a risk pool withhold of at least 20 percent of the fees due to members. The risk pool would be distributed only if the group as a whole meets pre-established efficiency and quality parameters. No CROSMA member will have access to any other member's fee information, and CROSMA will use a third party administrator (who is restricted from disclosing fee information to members) to negotiate with payers.

Response: CROSMA appears to be a bona fide joint venture in which members will assume significant financial risk. Here, it appears appropriate to treat services provided by orthopaedic surgeons as the relevant service market. Although there is insufficient information to determine if CROSMA's proposed 28-county region is the appropriate geographic market, good evidence indicates that CROSMA's market share (about 35 percent) would not be appreciably greater with a smaller geographic market definition. CROSMA should not create anticompetitive market power since payers have significant alternatives who will constrain CROSMA's pricing, and CROSMA members will be able to contract with payers individually if they choose. Several payers expressed support for the formation of CROSMA and it appears that the network's formation may create operational efficiencies that could lower costs to consumers in the greater Cincinnati area. The Department has no present intention to challenge the proposal.

96-22 Home Care Alliance, Inc. 10/4/96

Health Care | Joint Venture
Home Health Care Services | Messenger Model

Facts: Three home health care providers in Mississippi proposed to form a statewide network to contract with managed care plans. Home health agency territories in Mississippi are designated by the state, and these three agencies compete in only one county, although additional competing agencies may be added to the network in the future. The network would be non-exclusive and would avoid joint price setting by using a "messenger model" contracting process. An independent third party ("messenger") would obtain fee schedules from each member and convey them to payers; payer contract proposals would be forwarded to each member for its unilateral decision whether to accept the contract terms offered. At a payer's request, the messenger could discuss but not negotiate or agree to non-price issues such as utilization review, credentialing, and quality assurance standards.

Response:  Since the proposed initial members are competitors in only a single county and cannot become competitors in the future without a change in Mississippi law, there is little possibility of horizontal collusion among them.  While additional competing members may be added in the future, this should not cause competitive harm since the network will operate using messenger model arrangements that appear to be properly structured to avoid agreements on price and other competitively sensitive matters.  The Department has no present intention to challenge the proposal.

96-23 Anne Arundel Medical Center Anesthesiologists — 10/17/96

Health Care Medical Services — Acquisition/Merger

Facts:  The sixteen independent practitioner anesthesiologists that currently provide anesthesia services at Anne Arundel Medical Center in Annapolis, Maryland proposed to merge into a single, integrated group to contract with the Medical Center and third-party payers.  The Medical Center and payers indicated a preference for a single anesthesia group for a variety of reasons including ease of negotiating contracts, scheduling doctors' time, identifying and budgeting for costs, and establishing and monitoring consistent quality control standards.  The proposal would enable the Medical Center to contract with the integrated group about pricing terms in order to offer payers global fee arrangements.

Response:  Under any plausible geographic market definition and assumption about the number of market participants, the merger does not raise substantial competitive concerns.  This conclusion is bolstered by the lack of concern about possible anticompetitive effects by the Medical Center or any third-party payers who utilize the Medical Center.  The merged group should face effective competitive constraints on its ability to exercise market power.  In addition, the merger may produce substantial efficiencies to the benefit of consumers.  The Department has no present intention to challenge the proposal.

96-24 RWHC Network, Inc. — 11/12/96

Health Care Hospital Services — Joint Venture

Facts:  A group of 21 small, rural hospitals in Wisconsin proposed to form a network to contract with managed care plans and other third-party payers.  Initially, network contracts would provide for services on a discounted fee-for-service basis, but the network's goal would be to provide services on a capitated basis. The network would employ the services of a third-party administrator, probably the Rural Wisconsin Health Cooperative, of which they are all members, to collect and analyze data from each member hospital, create data bases, prepare statistical analyses, and furnish recommendations to enable the network to contract with payers.  No member would have access to any disaggregated information held by the administrator.  Each member would be free to join other networks and to contract individually with payers.  The network contended that each of its proposed members serves a different geographic area and that members do not compete with each other for patients.

Response: Based on the parties' representations regarding the absence of competition among the network's member hospitals, the network's proposed operations are not likely to cause anticompetitive effects. The network appears to be a bona fide joint venture designed to facilitate health care contracting between small, rural hospitals that are not actual or potential competitors and managed care organizations and other large third-party payers. No managed care plan or other third-party payer expressed concern that the network is likely to result in competitive harm. The Department has no present intention to challenge the proposal.